



Idaho Public Utilities Commission

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Paul Kjellander, Commissioner
Mack A. Redford, Commissioner
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Case No. IPC-E-12-25 and IPC-E-12-26, Order No. 33155

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Idaho Power, renewable power developer settle dispute

BOISE (Oct. 30, 2014) -- Idaho Power Company and the developer of two Magic Valley anaerobic digester power projects have agreed to resolve their dispute and avoid further litigation regarding the developer's failure to meet its scheduled operation date.

An Idaho Public Utilities Commission order issued Wednesday closes the cases for each project and directs that the delay damages that have already been paid by the developer be directed toward Idaho Power customers in the annual Power Cost Adjustment next June 1.

The projects, owned by Exergy Development Group of Idaho/New Energy, were for 1.2 megawatts each and were to have been supplying power to Idaho Power by late 2012. The first project, Swagger Farms near Buhl, was to have been online by October 2012 and a second, Double B near Murtaugh, by December 2012.

When the projects failed to meet their online dates, Idaho Power filed a complaint with the commission and sought to terminate the proposed 15-year sales agreements. But the developer objected, claiming the projects were delayed by "force majeure" or events beyond the developer's control. The alleged force majeure was a case before the commission regarding renewable projects that fall under the Public Utility Regulatory Policies Act (PURPA) and the ownership of the renewable energy credits associated with the projects. Exergy claimed that the case caused uncertainty among lenders making it impossible to get financing for the projects. Further, Exergy claimed that the commission did not have jurisdiction over the complaint because contract disputes should be settled in the courts and not by the commission.

After the commission denied the developer's motion to dismiss the Idaho Power complaint, Exergy appealed to the Idaho Supreme Court. The commission argued that the contracts signed by the parties for both projects state that all disputes "related to or arising under this agreement" would be submitted to the commission for resolution. Further, past Supreme Court decisions give the commission jurisdiction to hear complaints against public utilities, especially as they pertain to the determination of rates paid by customers. The amount Idaho Power pays for energy from PURPA contracts is passed on to Idaho Power customers.

In June, the Supreme Court held that the commission has jurisdiction to “interpret contracts where the parties have agreed to permit the commission to do so,” and the commission has the statutory authority to determine if a regulated utility, like Idaho Power, has an obligation under federal PURPA law to buy power from an independent, small-power producer.

Following the Supreme Court ruling, the commission issued an order directing Exergy to file its answer to Idaho Power’s initial complaint by Oct. 3. Five days later, Idaho Power filed a motion, also signed by counsel for Exergy, stating that the parties had agreed to resolve their dispute.

The commission’s order closing these cases and other documents related to this case can be viewed on the commission’s Website at www.puc.idaho.gov. Click on “Open Cases” under the “Electric” heading and scroll down to case numbers IPC-E-12-25 and IPC-E-12-26.

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